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**Hatcher Trade Press, Inc. d/b/a Hatcher Press Inc.  
and International Brotherhood of Teamsters  
Local 853.** Case 20–CA–34695

August 31, 2010

**DECISION AND ORDER**

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE AND  
HAYES

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by International Brotherhood of Teamsters Local 853 on October 7, 2009, the General Counsel issued the complaint on December 30, 2009 against Hatcher Trade Press, Inc. d/b/a Hatcher Press Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On February 25, 2010, the General Counsel filed a Motion for Default Judgment with the Board. On March 1, 2010, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by January 13, 2010, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated February 17, 2010, notified the Respondent that unless an answer was received by February 24, 2010, a motion for default judgment would be filed.<sup>1</sup>

<sup>1</sup> A copy of the complaint was personally served on the Respondent on January 28, 2010 by leaving a copy at its principal place of business, because service by certified mail was not accepted by the Respondent. The Notice to Show Cause was sent to the Respondent by certified mail on March 1, 2010. The Respondent did not claim this item, although the postal service left a notice on March 3, 2010. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the

In the absence of good cause being shown for the failure to file an answer or a response to the Notice to Show Cause, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with an office and place of business in San Carlos, California, the Respondent's facility, has been engaged in business as a commercial printer.

During the calendar year ending December 31, 2008, the Respondent, in conducting its business operations described above, purchased and received at its San Carlos, California facility goods valued in excess of \$50,000 from other enterprises, including XPEDX Division of International Paper, located within the State of California, each of which other enterprises had received the goods directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act; that Graphic Communications Union Local 583 was a labor organization within the meaning of Section 2(5) of the Act; and that International Brotherhood of Teamsters Local 853 is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Brice Tarling	- President
Christine Renninger	- Human Resources Manager

The following employees of the Respondent (the bindery unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing work covered under the terms of the collective-bargaining agreement between Respondent and Graphic Communications Union Local 583, covering bindery employees effective by its terms

Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited therein. In addition, as noted above, the complaint was personally served on the Respondent.

from May 16, 1994 to May 16, 1999, and subsequent extensions to that agreement.

The following employees of the Respondent (the lithography unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing work covered by the terms of the collective bargaining agreement between Respondent and Graphic Communications Union Local 583, covering lithography employees effective by its terms from May 16, 1994 to May 16, 1999, and subsequent extensions to that agreement.

At all material times from about May 16, 1994 until December 1, 2006, Graphic Communications Union Local 583 was the exclusive collective-bargaining representative of the bindery and lithography units and was recognized as the representative by the Respondent. This recognition was embodied in separate collective-bargaining agreements covering each of the respective units effective for the period May 16, 1994 through May 16, 1999, and subsequent extensions of those agreements, the most recent of which were effective for the period February 24, 2003 through February 24, 2007.

At all material times, from about May 16, 1994 until December 1, 2006, based on Section 9(a) of the Act, Graphic Communications Union Local 583 was the exclusive collective-bargaining representative of the Bindery and Lithography Units.

On December 1, 2006, Graphic Communications Union Local 583 merged into Teamsters Local 853 (the Union).

At all material times since December 1, 2006, the Union has been the exclusive collective-bargaining representative of the Bindery and Lithography Units and has been recognized as the representative by the Respondent. This recognition has been embodied in extensions to each of the May 16, 1994 through May 16, 1999 collective-bargaining agreements covering the respective units, the most recent of which were effective for the period March 12, 2009 through November 12, 2009.

At all material times since December 1, 2006, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Bindery and Lithography Units.

About September 23, 24, and 28, 2009, the Respondent, by Christine Renninger at the Respondent's facility, bypassed the Union and dealt directly with its employees in the bindery and lithography units by soliciting employees to sign an acknowledgement of their final paychecks as the total amount due and owing.

On unknown dates in about late September and late October 2009, the Respondent, by letter from Christine Renninger, bypassed the Union and dealt directly with its employees in the bindery and lithography units by soliciting employees to sign an acknowledgement of their final paychecks as the total amount due and owing.

About September 22, 2009, the Union requested that the Respondent bargain collectively about the effects of its decision to close its doors and go out of business.

Since about September 22, 2009, the Respondent has failed and refused to bargain collectively about the subject set forth above.

The subject set forth above relates to the wages, hours, and other terms and conditions of employment of the Bindery and Lithography Units and is a mandatory subject for the purposes of collective bargaining.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the Respondent's decision to close its facility, we shall order the Respondent to bargain with the Union, on request, about the effects of that decision. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violation and to re-create in some practicable manner a situation in which the parties' bargaining position is

not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).<sup>2</sup>

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>3</sup>

Further, we shall order the Respondent to cease and desist from bypassing the Union and dealing directly with unit employees by soliciting them to sign an acknowledgement of their final pay checks as the total

amount due and owing, and we shall affirmatively order the Respondent to bargain collectively and in good faith with the Union, upon request, concerning the total amount due and owing to unit employees.

Finally, because the Respondent's facility has apparently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of the unit employees who were employed by the Respondent at its facility at any time since September 22, 2009, in order to inform them of the outcome of this proceeding.

#### ORDER

The National Labor Relations Board orders that the Respondent, Hatcher Trade Press, Inc. d/b/a Hatcher Press, Inc., San Carlos, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Brotherhood of Teamsters Local 853 as the exclusive collective-bargaining representative of the employees in the units set forth below, concerning the effects of its decision to close its facility and go out of business:

The Bindery Unit:

All employees performing work covered under the terms of the collective-bargaining agreement between Respondent and Graphic Communications Union Local 583, covering bindery employees effective by its terms from May 16, 1994 to May 16, 1999, and subsequent extensions to that agreement.

The Lithography Unit:

All employees performing work covered by the terms of the collective bargaining agreement between Respondent and Graphic Communications Union Local 583, covering lithography employees effective by its terms from May 16, 1994 to May 16, 1999, and subsequent extensions to that agreement.

(b) Bypassing the Union and dealing directly with unit employees by soliciting them to sign an acknowledgement of their final paychecks as the total amount due and owing.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith with the Union concerning the effects on the unit employees of the Respondent's decision to close its facility,

<sup>2</sup> See also, *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). The complaint and motion are less than clear with respect to whether the Respondent implemented the decision to close its facility or laid off the employees. Thus, we do not know whether, or to what extent, the refusal to bargain about effects had an impact on employees. In these circumstances, we shall permit the Respondent to contest the appropriateness of a *Transmarine* backpay remedy at the compliance stage. See, e.g., *Fabricating Engineers, Inc.*, 341 NLRB 10, 11 fn. 1 (2004); *Chicago Truss Connection, LLC*, 340 NLRB 974, 975 fn. 1 (2003); *Corbin, Ltd.*, 340 NLRB 1001, 1002 fn. 2 (2003).

<sup>3</sup> In the complaint, the General Counsel seeks interest computed on a compounded quarterly basis for any backpay or other monetary awards. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Rogers Corp.*, 344 NLRB 504 (2005).

and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay to the unit employees their normal wages for the period set forth in the remedy section of this decision.

(c) On request, bargain collectively and in good faith with the Union concerning the total amount due and owing to unit employees.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"<sup>4</sup> to the Union and all unit employees who were employed by the Respondent at any time since September 22, 2009.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 31, 2010

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Wilma B. Liebman, Chairman

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Mark Gaston Pearce, Member

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Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES

MAILED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Brotherhood of Teamsters Local 853 as the exclusive collective-bargaining representative of the employees in the units set forth below, concerning the effects of our decision to close our facility:

#### The Bindery Unit:

All employees performing work covered under the terms of the collective-bargaining agreement between us and Graphic Communications Union Local 583, covering bindery employees effective by its terms from May 16, 1994 to May 16, 1999, and subsequent extensions to that agreement.

#### The Lithography Unit:

All employees performing work covered by the terms of the collective bargaining agreement between us and Graphic Communications Union Local 583, covering lithography employees effective by its terms from May 16, 1994 to May 16, 1999, and subsequent extensions to that agreement.

WE WILL NOT bypass the Union and deal directly with unit employees by soliciting them to sign an acknowledgement of their final paychecks as the total amount due and owing.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively and in good faith with the Union concerning the effects on unit employees of our decision to close our facility, as requested by the Union, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay the unit employees their normal wages for the period set forth in the Decision and Order of the National Labor Relations Board, with interest.

WE WILL, on request, bargain collectively and in good faith with the Union concerning the total amount due and owing to unit employees.

HATCHER TRADE PRESS, INC. D/B/A HATCHER PRESS, INC.